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Chapter 567: Saying “I Do” to Name Changes by Husbands and Domestic Partners

Yury Kolesnikov

Code Sections Affected

Code of Civil Procedure § 1279.6 (amended); Family Code §§ 298.6, 306.5 (new), §§ 298, 298.5, 355, 358 (amended); Health and Safety Code §§ 103175, 103180 (amended).

AB 102 (Ma); 2007 STAT. Ch. 567.

“An old Roman maxim runs, ‘Sine nomine homo non est’ (without a name a person is nothing). One’s name is a signboard to the world. It is one of the most permanent of possessions; it remains when everything else is lost; it is owned by those who possess nothing else. A name is the only efficient means to describe someone to contemporaries and to posterity. When one dies it is the only part that lives on in the world.”

—Bill Lockyer¹

I. INTRODUCTION

“In the Shakespeare play [*Romeo and Juliet*], Juliet asks Romeo to doff the Montague family name, and Romeo says he’d willingly do so to win Juliet’s love.”² In Marina Del Ray, California, a twenty-nine-year-old Mike Buday decided similarly.³ That decision, however, was met with fierce resistance—not from swords, as with Romeo, but from bureaucracy.⁴ Mike “had to go through the courts, pay a court filing fee [of \$320], pay a \$32 application fee in addition to the \$70 marriage license fee, and publish the name change in a local newspaper for four weeks” (which cost an additional several hundred dollars).⁵

Mike found the ordeal to be both time consuming and expensive, to say the least.⁶ However, if instead it had been Mike’s wife who wanted to change her name, all she would have had to do was fill in the appropriate space in the license

1. 83 Op. Cal. Att’y Gen. 136, 136 (2000) (quoting *In re Marriage of Gulsvig*, 498 N.W.2d 725, 730 (Iowa 1993) (Snell, J., dissenting)).

2. Editorial, *Let Men, Women Change Surnames Equally*, APOSTILLE US (New York, N.Y.), Mar. 26, 2007, at B4, available at http://apostille.us/news/let_men_women_change_surnames_equally.shtml [hereinafter Editorial] (on file with the *McGeorge Law Review*).

3. Nannette Miranda, *Man Tries to Change to Wife’s Name: But Red Tape Makes It Difficult*, ABC7 NEWS, Mar. 27, 2007, <http://abclocal.go.com/kgo/story?section=politics&id=5157115> (on file with the *McGeorge Law Review*) (“The 29-year-old wanted to take his wife Diana Bijon’s last name to show love for his father-in-law . . .”).

4. *See id.*

5. ASSEMBLY COMMITTEE ON JUDICIARY, COMMITTEE ANALYSIS OF AB 102, at 4 (Mar. 24, 2007); Miranda, *supra* note 3.

6. ASSEMBLY COMMITTEE ON JUDICIARY, COMMITTEE ANALYSIS OF AB 102, at 4 (Mar. 24, 2007).

document.⁷ “Diana and I only ask that the state treat us as equals in marriage and allow us to pursue our family under the name that we choose.”⁸ Upon learning of Mike’s plea, the American Civil Liberties Union of Southern California decided to help and filed a lawsuit in federal court on his and his wife’s behalf.⁹ The lawsuit alleged that California law violated the Equal Protection Clause of the Fourteenth Amendment and asked the court to hold that such disparate treatment was unconstitutional.¹⁰

In addition, to remedy this injustice, Assembly Member Ma introduced the Name Equality Act of 2007 (Chapter 567).¹¹ As Juliet told Romeo, “O, be some other name! What’s in a name? That which we call a rose by any other name would smell as sweet.”¹² With Chapter 567 now in effect, a Romeo of today would have no trouble changing his name from Montague to Capulet.¹³

II. LEGAL BACKGROUND

A. Common Law Right to Change One’s Name

Under English common law, a person could change his or her name at will,¹⁴ as long as there was no fraudulent intent.¹⁵ Subject to a few exceptions,¹⁶ this common law right has not been abrogated by statute in California.¹⁷ As such, any person is free to change his or her name at will, without resort to legal proceedings.¹⁸

7. *Id.*

8. Miranda, *supra* note 3.

9. EQUALITY CAL., FACT SHEET: NAME EQUALITY ACT (AB 102) 2, <http://www.eqca.org/atf/cf/%7B687DF34F-6480-4BCD-9C2B-1F33FD8E1294%7D/AB%20102%20FACT%20SHEET.PDF> (last visited Jan. 5, 2007) [hereinafter FACT SHEET] (on file with the *McGeorge Law Review*).

10. Martin Kasindorf, *L.A. Man Sues to Take Wife’s Last Name; ACLU Suit Alleges Gender Discrimination*, USA TODAY, Jan. 12, 2007, at 3A.

11. ASSEMBLY COMMITTEE ON JUDICIARY, COMMITTEE ANALYSIS OF AB 102, at 4 (Mar. 24, 2007).

12. Editorial, *supra* note 2.

13. See *infra* Part III (describing the benefits of the Name Equality Act of 2007).

14. See 83 Op. Cal. Att’y Gen. 136, 136 (2000) (“The phrase ‘common law change of name’ refers to the adoption and use of a name different from the one by which a person was formerly known, without resort to judicial process or other intervention by the state.”).

15. Michael Rosensaft, Comment, *The Right of Men to Change Their Names upon Marriage*, 5 U. PA. J. CONST. L. 186, 211 (2002) (defining “fraudulent intent” as a change of name for “the specific purpose of . . . conceal[ing] one’s true identity”).

16. The right to change one’s name is denied to state prisoners (unless with permission of the Director of Corrections), any person “under the jurisdiction of the Department of Corrections” (unless with permission of that person’s parole agent or probation officer), and any person “who is required to register as a sex offender under Section 290 of the Penal Code” (“unless the court determines that it is in the best interest of justice to grant the petition and that doing so will not adversely affect the public safety”). CAL. CIV. PROC. CODE § 1279.5(b)-(d) (West 2007).

17. CAL. CIV. PROC. CODE § 22.2 (West 2007); CAL. CIV. PROC. CODE § 1279.5(a) (West 2007).

18. *In re Ross*, 8 Cal. 2d 608, 609, 67 P.2d 94, 95 (1937); see also FACT SHEET, *supra* note 9, at 1 (“California has long recognized, through the common law, a person’s right to change their name through

This common law right, however, “carries with it no mandate to those with whom one comes in contact to accept at face value the nexus between the new name and the individual who assumes it.”¹⁹ Thus, while the common law change of name is “valid” in California, this validity does not include “a requirement that it be recognized or accepted by the world at large, or indeed, by anyone” except the person changing his or her name.²⁰ While this might not have been a problem at common law in England, in today’s society a change of name is “meaningless” unless there is also some official proof “that one’s name has actually been changed.”²¹

B. Change of Name upon Marriage

Marriage is one context in which a name change occurs in the United States. Despite prevalent practice, however, English common law never *required* that a woman adopt her husband’s last name upon marriage.²² Nevertheless, up until the end of the 1960s, a number of American jurisdictions erroneously held that “a woman automatically lost her maiden name upon marriage and, in its place, took her husband’s surname as her legal name.”²³ Most jurisdictions have since retreated from this position.²⁴ Beginning in the 1970s, feminist groups successfully fought this “male dominated practice,” and today all jurisdictions allow a woman to either keep her maiden name or take her husband’s last name upon marriage.²⁵

Not surprisingly, the feminist movement did little to advance the cause of male surname changes.²⁶ In California, for example, prior law “require[d] that a marriage license form contain certain minimum information, including the maiden name of the female.”²⁷ However, whether there was a field on the

continuous usage over time and without fraudulent intent.”).

19. 83 Op. Cal. Att’y Gen. 136, 136 (2000).

20. *Id.*

21. Rosensaft, *supra* note 15, at 212. Rosensaft notes that, “[i]n eighteenth century England, people did not have to worry about driver’s licenses, social security cards, or bank applications.” *Id.* at 211.

22. Yasuhide Kawashima, *Marriage and Name Change in Japanese Family Law*, 26 U. BRIT. COLUM. L. REV. 87, 88 (1992). *But see* Kif Augustine-Adams, *The Beginning of Wisdom Is to Call Things by Their Right Names*, 7 S. CAL. REV. L. & WOMEN’S STUD. 1, 5 (1997) (“Whether courts, attorneys general and legal treatises correctly interpreted the common law or distorted and misinterpreted it to further a particular view of women’s dependence is debatable.”).

23. Kawashima, *supra* note 22, at 88; *see also* Augustine-Adams, *supra* note 22, at 5 (noting that, by 1971, even the Department of State “refused to issue passports to married women in their maiden names,” maintaining that upon marriage the woman’s legal name changed to that of her husband).

24. *See, e.g.,* Weathers v. Super. Ct., 54 Cal. App. 3d 286, 289, 126 Cal. Rptr. 547, 549 (2d Dist. 1976) (“[W]hen a woman marries, she may *choose* to be known by the surname of her husband or by her maiden surname.” (emphasis added)). For a list of cases from other jurisdictions concluding that the law does not require a woman to change her name upon marriage, *see* Augustine-Adams, *supra* note 22, at 6 n.18.

25. Rosensaft, *supra* note 15, at 186.

26. *Id.* at 187.

27. ASSEMBLY COMMITTEE ON JUDICIARY, COMMITTEE ANALYSIS OF AB 102, at 3 (Mar. 24, 2007).

marriage license form for the male's birth name was in the discretion of each county.²⁸

C. Statutory Change of Name

As already noted, today, an official proof of a name change is required if a person also wants to change that name on his or her credit cards, driver's license, or social security card.²⁹ Thus, collaboration with the state government is essential.³⁰ In California, this has been accomplished via sections 1275 through 1278 of the Code of Civil Procedure, which provide a person with an official record of his or her name change.³¹

For an adult³² to make a statutory name change, he or she needs to submit a signed petition to the superior court of the county in which he or she lives.³³ The petition needs to specify the person's place of birth and residence, the current and proposed names, and the reason for the change.³⁴ The court will then issue an order, setting the time for a hearing³⁵ and directing all persons interested in the matter to appear before the court and "to show cause why the application for change of name should not be granted."³⁶ The copy of the order must be published in a newspaper of general circulation or "in three of the most public places in the county" for four weeks.³⁷

28. *Id.* It must be noted that Mike Buday's lawsuit did not focus on specific statutory language but rather attacked "how marriage licenses are worded and how state employees respond to a groom's name-changing request without a court order." Jim Sanders, *Groom Alleges Bias on Identity: Suit Says Man Was Blocked From Taking His Bride's Last Name*, SACRAMENTO BEE, Jan. 7, 2007, at A3. This is precisely the ambiguity that the Name Equality Act of 2007 was intended to address. *Id.*

29. See Rosensaft, *supra* note 15, at 212 (noting that a name change is "meaningless" without some official proof).

30. *Id.* at 206.

31. CAL. CIV. PROC. CODE §§ 1275-1278 (West 2007); see also *In re Ross*, 8 Cal. 2d 608, 609, 67 P.2d 94, 95 (1937) ("[T]he purpose of the statutory procedure is simply to have, wherever possible, a record of the change."); 83 Op. Cal. Att'y Gen. 136, 136 (2000) (stating that the statutory process is needed to provide official documentation that is definite and one that can be relied upon "even after the death of all contemporaneous witnesses").

32. The process is different when the person changing the name is a minor, with either a parent, guardian, or relative being able to sign the petition, and with the requirement that notice be sent to the minor's parents or grandparents. CAL. CIV. PROC. CODE §§ 1276(a)-(f), 1277(e) (West 2007). Furthermore, whenever "a petition has been filed [for] a minor, and both parents, if living, do not join in consent, the court may deny the petition in whole or in part if it finds that any portion of the proposed name change is not in the best interest of the child." *Id.* § 1278.5 (West 2007).

33. *Id.* § 1276(a).

34. *Id.*

35. The hearing date cannot be "less than six nor more than [twelve] weeks from the time of making the order." *Id.* § 1277(a).

36. *Id.*

37. *Id.*

This process, however, does not guarantee that the court will grant the petition.³⁸ If there are any objections filed, the court, after examining under oath all the petitioners, remonstrants,³⁹ and others, “may make an order changing the name, or dismissing the petition or application, *as to the court may seem right and proper*.”⁴⁰ Even if no written objection is timely filed,⁴¹ the statute only provides that “the court *may* grant the petition without a hearing.”⁴²

Despite this seemingly broad discretion, the California Supreme Court has determined that at least “some substantial reason must exist for the denial.”⁴³ What this “substantial reason” will be, however, is determined on a case-by-case basis.⁴⁴ A court is not likely to grant the change of name if the change is for a fraudulent purpose,⁴⁵ if the new name is bizarre or confusing,⁴⁶ or if the name is offensive.⁴⁷ Nevertheless, even if a court denies an application and withholds its sanction, the court cannot permanently enjoin a petitioner from using the proposed name.⁴⁸ When the statutory process fails, an individual still retains the common law right to change his or her name through usage.⁴⁹ Absent court approval, however, this new name will not be legally recognized.⁵⁰

38. See *In re Ross*, 8 Cal. 2d 608, 609, 67 P.2d 94, 95 (1937) (“This provision permits the court in the exercise of its discretion to deny the application . . .”).

39. A “remonstrant” is one who “vigorously object[s] or oppose[s].” MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY 989 (10th ed. 1999).

40. CAL. CIV. PROC. CODE § 1278(a) (West 2007) (emphasis added).

41. An objection must be filed “at least two court days before the matter is scheduled to be heard.” *Id.* § 1277(a) (West 2007).

42. *Id.* (emphasis added).

43. *In re Ross*, 8 Cal. 2d at 610, 67 P.2d at 95-96 (holding that a prior debt discharged in bankruptcy was not a “substantial reason” to deny the petition).

44. See *In re Useldinger*, 35 Cal. App. 2d 723, 726-27, 96 P.2d 958, 960 (1st Dist. 1939) (holding, *inter alia*, that a change of name should not have been denied where the applicant used the proposed name for fourteen years and where there was no showing of fraud or of any invasion of any legal right of the remonstrant with a similar, but not the same, name).

45. See, e.g., *Weingand v. Lorre*, 231 Cal. App. 2d 289, 293-94, 41 Cal. Rptr. 778, 781-82 (2d Dist. 1964) (denying the petition for a change of name where, contrary to his assertions, the applicant’s name was not hard to pronounce, he had no family connections to the proposed name, and the change was likely motivated by the desire to “cash in” on the reputation of the remonstrant).

46. See, e.g., *Ritchie v. Super. Ct.*, 159 Cal. App. 3d 1070, 1073-74, 206 Cal. Rptr. 239, 240-41 (1st Dist. 1984) (denying the petition to change the applicant’s name to “III” and stating that the common law does not recognize a change of name to one consisting solely of numbers or symbols).

47. See, e.g., *Lee v. Super. Ct.*, 9 Cal. App. 4th 510, 514, 11 Cal. Rptr. 2d 763, 765 (2d Dist. 1992) (denying an African-American’s petition for change of name to “Misteri Nigger” and stating that “no person has a statutory *right* to officially change his or her name to a name universally recognized as being offensive”).

48. *Weingand*, 231 Cal. App. 2d at 294, 41 Cal. Rptr. at 782.

49. *Id.*

50. See *Rosenshaft*, *supra* note 15, at 207-11 (explaining that the common law right, although available, is impractical today).

III. CHAPTER 567

Chapter 567, also known as the Name Equality Act of 2007,⁵¹ ensures that in California, the option to change one's name on marriage license or domestic partnership registration forms is available to every individual, regardless of gender or sexual orientation.⁵² A qualified individual wishing to change his or her name is no longer required to resort to the statutory provision set out in sections 1275 through 1278 of the Code of Civil Procedure.⁵³

A. *Marriages*

Chapter 567 provides that either party to a marriage, or both, can change his or her middle and last name simply by writing the new name on the marriage license application.⁵⁴ The parties are not required to have the same name and neither of them is required to change his or her name upon marriage.⁵⁵

If a party elects to change his or her middle or last name, the party can choose between (1) "[t]he current last name of the other spouse," (2) "[t]he last name of either spouse given at birth," (3) "[a] name combining into a single last name"⁵⁶ all or a segment of the current last name or the last name of either spouse given at birth," or (4) "[a] hyphenated combination of last names."⁵⁷ The new name must be chosen "without intent to defraud."⁵⁸

Once a party decides whether to adopt a new name, Chapter 567 provides that a certified copy of the marriage certificate, which contains either the new or former name, is "proof that the use of the new name or retention of the former name is lawful."⁵⁹

Chapter 567 also makes changes to the marriage license itself.⁶⁰ Instead of requiring only the maiden name of each party's mother, the marriage license must now state the "last names at birth of each party's parents."⁶¹ Likewise, instead of stating only the maiden name of the female, the marriage license must now state "the name used prior to the intended marriage by each party."⁶² Finally,

51. 2007 Cal. Stat. ch. 567, § 1.

52. *Id.* § 2(b)(1)-(2).

53. *Id.* § 2(b)(3). See *supra* Part II.C for a discussion of the procedure involved in a statutory name change.

54. CAL. FAM. CODE § 306.5(b)(1) (enacted by Chapter 567).

55. *Id.* § 306.5(a) (enacted by Chapter 567).

56. It is not clear why, even though the paragraph refers to choosing either a new middle or last name, this sub-division refers solely to the "last name." See *id.* § 306.5(b)(2)(C) (enacted by Chapter 567).

57. *Id.* § 306.5(b)(2) (enacted by Chapter 567).

58. *Id.* § 306.5(b)(1) (enacted by Chapter 567).

59. *Id.* § 306.5(b)(3)(A) (enacted by Chapter 567).

60. See generally CAL. HEALTH & SAFETY CODE § 103175 (amended by Chapter 567) (outlining the requirements of a valid California marriage license).

61. *Id.* § 103175(a)(1) (amended by Chapter 567).

62. *Id.* (amended by Chapter 567).

the marriage license must state the new name, if any, chosen by each party.⁶³ Similar changes⁶⁴ apply to the License and Certificate of Non-Clergy Marriage.⁶⁵

Whether the parties decide to change their names upon marriage or not, Chapter 567 does not permit them to amend the marriage certificate at a later date.⁶⁶ If a party wants to add or change his or her name in the future, he or she must do so either through usage or by petitioning the court pursuant to sections 1275 through 1278 of the Code of Civil Procedure.⁶⁷

B. Domestic Partnerships

Chapter 567 also provides that parties to a registered domestic partnership can similarly choose to change their middle and last names by writing the new name on the Declaration of Domestic Partnership form.⁶⁸ The choices available to domestic partners are identical to those available to spouses.⁶⁹ In addition, as with the change of name upon marriage, the parties to a domestic partnership are not required to have the same name and neither party is required to change his or her name upon registration of a domestic partnership.⁷⁰ However, the new name must be chosen “without intent to defraud.”⁷¹

Furthermore, as with a marriage certificate, once a party decides to adopt a new name, Chapter 567 permits a certified copy of the Certificate of Registered Domestic Partnership to operate as “proof that the use of the new name or retention of the former name is lawful.”⁷²

Finally, Chapter 567 provides that the Certificate of Registered Domestic Partnership shall include “the name used by each party before registration of the domestic partnership,” as well as the new name, if any, chosen by each party upon registration.⁷³

63. *Id.* (amended by Chapter 567).

64. *Id.* § 103180(c)(1) (amended by Chapter 567).

65. Pursuant to section 307 of the Family Code, “members of a particular religious society or denomination not having clergy for the purpose of solemnizing marriage or entering the marriage relation” are not bound by the Family Code provision on the validity of marriage as long as the parties sign and endorse a statement as prescribed by the Department of Health Services and as long as the “License and Certificate of Non-Clergy Marriage . . . is returned to the county recorder . . . within [ten] days after the ceremony.” CAL. FAM. CODE § 307 (West Supp. 2007).

66. *Id.* § 306.5(b)(4) (enacted by Chapter 567).

67. *Id.* (enacted by Chapter 567).

68. *Id.* § 298.6(b)(1) (enacted by Chapter 567).

69. *Id.* § 298.6(b)(2) (enacted by Chapter 567). For the available choices, see *supra* notes 56-58 and accompanying text.

70. *Id.* § 298.6(a) (enacted by Chapter 567).

71. *Id.* § 298.6(b)(1) (enacted by Chapter 567).

72. *Id.* § 298.6(b)(3)(A) (enacted by Chapter 567).

73. *Id.* § 298.5(e) (amended by Chapter 567).

C. *Protections Against Discrimination*

In addition to establishing the right to change one's name upon marriage or registration of a domestic partnership, Chapter 567 protects all electing parties, not just female spouses, "from discrimination based on their name choices."⁷⁴ Specifically, it prohibits persons engaged in a trade or business or in the provision of service from refusing to do business with or provide service to a person because of the name he or she chooses to use.⁷⁵ It also prohibits such persons from imposing, as a condition of doing business or providing service, a requirement that a person use a name other than the one that he or she chose to use.⁷⁶

D. *Additional Changes*

Chapter 567 also requires that the State Department of Public Health (DPH) prepare and publish a brochure that contains information about the option to change one's name upon marriage or registration of a domestic partnership.⁷⁷

Furthermore, when applying for an original or duplicate driver's license, Chapter 567 provides that certified copies of the following shall serve as acceptable forms of identification: a Certificate of Registered Domestic Partnership, a document "substantially equivalent to a Certificate of Registered Domestic Partnership," a marriage certificate, or "a marriage certificate recording a marriage outside of [California]."⁷⁸

Finally, nothing in Chapter 567 abrogates the common law right of any person to change his or her name through usage or the statutory right to seek a name change pursuant to sections 1275 through 1278 of the Code of Civil Procedure.⁷⁹

74. FACT SHEET, *supra* note 9, at 1.

75. CAL. CIV. PROC. CODE § 1279.6(a) (amended by Chapter 567).

76. *Id.* § 1279.6(b) (amended by Chapter 567).

77. CAL. FAM. CODE § 358(a)(4) (amended by Chapter 567). Pursuant to this section, the brochure must also contain information concerning genetic defects and diseases, AIDS, and domestic violence, as well as resources that the parties can utilize to get help in such situations. *Id.* § 358(a)(1)-(3) (amended by Chapter 567). County clerks distribute the brochures to each applicant for a marriage license, while the Secretary of State (SOS) distributes a copy to persons who qualify as domestic partners. *Id.* § 358(b) (amended by Chapter 567). The DPH must also prepare and provide to the SOS, who will make it available, a separate domestic abuse brochure specific to lesbian, gay, bisexual, and transgender partners. *Id.* § 358(c) (amended by Chapter 567).

78. *Id.* §§ 298.6(b)(3)(B)-(C), 306.5(b)(3)(B)-(C) (enacted by Chapter 567). A document is "substantially equivalent" to a Certificate of Registered Domestic Partnership if it records either "[a] legal union of two persons that was validly formed in another jurisdiction and is recognized as a valid domestic partnership in [California] pursuant to Section 299.2" of the Family Code or "[a] legal union of domestic partners as defined by a local jurisdiction pursuant to Section 299.6" of the Family Code. *Id.* § 298.6(b)(3)(C) (enacted by Chapter 567).

79. *Id.* §§ 298.6(b)(4)-298.6(c), 306.5(b)(4)-306.5(c) (enacted by Chapter 567).

IV. ANALYSIS

Chapter 567 “is about equity, flexibility and getting with the times.”⁸⁰ According to its sponsor, “[c]ouples should not be penalized for being in love or wanting to be in a committed, loving relationship.”⁸¹ No longer will men in traditional marriages or domestic partners have to jump through a series of hoops, pay for costly court proceedings and newspaper publications, and wait at least four weeks (and sometimes several months) to get their names changed upon marriage or registration of a domestic partnership.⁸²

In addition, Chapter 567 removes the “gender-biased language” in prior law, updates California’s forms and certificates for marriages and domestic partnerships, and ensures “that name changes are expedient and can be recorded for legal and identification purposes.”⁸³

A. Addressing the Arguments of the Opposition

Typically, those opposed to the right of men⁸⁴ to change their names upon marriage base their arguments on five separate grounds: (1) custom, (2) “preservation of the family unit,” (3) administrative convenience, (4) prevention of fraud, and (5) “de minimis injury.”⁸⁵

Custom as an independent and distinct argument lacks merit.⁸⁶ Just because something has been done for a long time does not mean that it is the only legitimate approach.⁸⁷ Social values continuously change and evolve over time.⁸⁸ Many practices once thought sound are no longer followed,⁸⁹ including the “custom” that women automatically take their husband’s name as their “legal

80. Press Release, Equality Cal., Assembly Passes Bill Ending Gender Bias in Marriage, Domestic Partnerships (May 7, 2007), <http://www.eqca.org/site/apps/nl/content2.asp?c=9oINKWMCF&b=2667047&ct=3843963> (on file with the *McGeorge Law Review*) (quoting Assembly Member Fiona Ma, Cal. State Assembly).

81. *Id.*

82. ASSEMBLY COMMITTEE ON JUDICIARY, COMMITTEE ANALYSIS OF AB 102, at 4 (Mar. 24, 2007).

83. Letter from Francisco Lobaco, Legislative Dir., ACLU and Vivek Malhotra, Legislative Advocate, ACLU, to Assembly Member Fiona Ma, Cal. State Assembly (Feb. 15, 2007) (on file with the *McGeorge Law Review*).

84. Arguably, since name changes by domestic partners are more frowned upon than name changes by husbands, similar arguments could also be asserted against domestic partners.

85. Rosenshaft, *supra* note 15, at 200.

86. *Id.* at 201.

87. *Id.*

88. *Id.*

89. *See id.* (noting that if custom always prevailed, then interracial marriages would never have been allowed and the juries would still be composed only of white jurors). Indeed, as Justice Kennedy famously stated, “times can blind us to certain truths and later generations can see that laws once thought necessary and proper in fact serve only to oppress.” *Lawrence v. Texas*, 539 U.S. 558, 579 (2003). The same is true of custom.

name” upon marriage.⁹⁰ As a result, a custom in and of itself is not a sufficient reason for allowing only women to change their names upon marriage.⁹¹

It is also “easy to dispense with” the argument that Chapter 567 is contrary to preservation of the family unit.⁹² It seems quite a stretch to argue that a name change by the husband will create a stigma for children.⁹³ In today’s society, where people frequently divorce and remarry, the fact that a child does not have the same last name as his mother or his father is no longer seen as stigmatizing.⁹⁴ In fact, by allowing husbands or domestic partners to change their last names, Chapter 567 decreases the likelihood of stigma by increasing the probability that children *will* have the same last name as both of their parents.⁹⁵

Furthermore, a common last name helps preserve the family unit among domestic partners.⁹⁶ By changing their last names, domestic partners can “create a more unified environment for themselves and their family members.”⁹⁷ As one couple stated, “[i]t was important for us to be recognized as a family, particularly for the health and safety of our son, and therefore we wanted our last names to be the same.”⁹⁸ In addition, by allowing the Certificate of Registered Domestic Partnership to be an acceptable form of identification, Chapter 567 simplifies the complex process that registered domestic partners must go through to become “a licensed foster-care home for youth that are in need of one.”⁹⁹

As for the administrative convenience argument, California already allows women to change their names upon marriage.¹⁰⁰ Thus, unless California has “different databases based on the gender of [its] citizens,” allowing men and

90. Augustine-Adams, *supra* note 22.

91. See Rosensaft, *supra* note 15, at 201 (noting that, although “[c]ustom may raise some administrative convenience questions,” the proposition that “custom controls *for its own sake* is meritless” (emphasis added)). To see problems that arise “as a result of a system based on customs and traditions attached to surnames,” one only needs to read Shakespearean *Romeo and Juliet*. See K.M. Sharma, *What’s in a Name?: Law, Religion, and Islamic Names*, 26 DENVER J. INT’L L. & POL’Y 151, 151 n.1 (1998) (noting the “fatal outcome[s]” of such a system).

92. *Id.*

93. *Id.* at 201-02.

94. *Id.* (“[S]ociety has changed, and today it is not all that uncommon for a child to have a different last name than his or her mother.”).

95. *Id.* at 201 (“[G]iving a man the right to adopt his wife’s name would not present any illegitimacy problems. The mother and child would, in fact, have the same name—as would the husband and wife.”).

96. Letter from Howard Jacobs, Dir. of Gov’t Relations, Gay & Lesbian Adolescent Soc. Servs., Inc., to Assembly Member Fiona Ma, Cal. State Assembly (Mar. 20, 2007) [hereinafter Jacobs Letter] (on file with the *McGeorge Law Review*); see also Press Release, Equality Cal., Bill Giving Domestic Partners Equal Opportunity to Change Names Passes First Committee (Mar. 27, 2007), <http://www.eqca.org/site/apps/nl/content2.asp?c=9oINKWMCf&b=2667047&ct=3707795> [hereinafter March Press Release] (on file with the *McGeorge Law Review*) (explaining that the ability to change names allows domestic partners to be recognized as a family).

97. Jacobs Letter, *supra* note 96.

98. March Press Release, *supra* note 96.

99. Jacobs Letter, *supra* note 96.

100. See, e.g., FACT SHEET, *supra* note 9, at 1 (noting that, prior to Chapter 567, “marriage applications [already] included a space for a female spouse to indicate a change in name”).

domestic partners to change their names will not require a tremendous change to the system.¹⁰¹ In fact, the fiscal effect will be minimal over the long run because individual counties will be able to recoup the increased costs by raising the license fees.¹⁰² Furthermore, it is unlikely that an overwhelming number of people will rush to change their names.¹⁰³ Just because there is a choice does not mean that it will be acted upon. In the 1970s, when women received the choice to either change their name to that of their husband or keep their own, many of them continued to follow the custom of taking their husband's name.¹⁰⁴ Similarly, even though they now have a choice, many men are likely to continue with the custom of keeping their names.¹⁰⁵

Another argument against allowing name changes for men and domestic partners is that such name changes could lead to fraud.¹⁰⁶ The argument is that those who cannot ordinarily change their names under the common law or pursuant to the statutory option will now be able to circumvent those exceptions.¹⁰⁷ These concerns, however, are unwarranted for two reasons. First, in order to commit fraud, an individual would need to be single and would then need to get married or enter into a domestic partnership.¹⁰⁸ It is unlikely that people would go to such lengths (and possibly divorce or annulment afterwards) just to change their name.¹⁰⁹ Second, and more importantly, seeing as this option was already available to women, it appears that California lacked a compelling interest in preventing such "sham" marriages to begin with.¹¹⁰

Finally, the argument that the injury from not being able to change one's name upon marriage or registration of a domestic partnership is "de minimis,"¹¹¹

101. Rosensaft, *supra* note 15, at 203.

102. See ASSEMBLY COMMITTEE ON APPROPRIATIONS, COMMITTEE ANALYSIS OF AB 102, at 1-2 (Apr. 17, 2007) (noting that the DPH would incur "minor absorbable costs" to change the forms and to incorporate the changes into its brochure, that the SOS would incur "minor absorbable costs" to incorporate the DPH brochure into its website, and that "counties would incur reprogramming costs of up to several thousand dollars each," which could later be recouped through increased license fees).

103. Sanders, *supra* note 28 (noting that Kimberly Salter, President of the California chapter of the National Organization for Women, "doubted that [Chapter 567] would prompt massive numbers of men to take their wife's last name").

104. Rosensaft, *supra* note 15, at 186-87 (noting that, after being presented with the choice of changing their name to that of their husband or keeping their own, "roughly ninety percent of women still adopted their husband's name upon marriage").

105. See Sanders, *supra* note 28.

106. Rosensaft, *supra* note 15, at 203-05.

107. See *id.* at 204 ("Allowing convicted murderers or sex offenders who have recently been released to easily change their names could promote fraudulent or unlawful conduct.").

108. *Id.* at 204-05 (noting that to effect the name change, the defrauder would first need to be single and would then need to "find someone willing to participate in a 'sham' marriage").

109. *Id.*

110. *Id.* at 205 ("If [preventing sham marriages was] an important state objective, then the state should place restrictions on *both* men and women with regard to name change upon marriage and divorce—not only men." (emphasis added)).

111. "De minimis" injury refers to one that is trifling or minimal. BLACK'S LAW DICTIONARY 443 (7th ed. 1999).

because common law and statutory name changes are readily available, disregards the trouble and time needed to establish a name change using either of these alternatives.¹¹² First, a common law change of name, without an official record to back it up, is practically “meaningless” in today’s society.¹¹³ Second, a statutory change of name, while providing an official record, requires time, money, and possible embarrassment.¹¹⁴ In addition, since courts have broad discretion to deny an application seeking a name change, the statutory approach does not always guarantee that the individual will be successful in changing his or her name.¹¹⁵ Thus, the trouble and the uncertainty associated with both of these alternatives demonstrate that the injury from not being able to change one’s name in these circumstances is far from “de minimis.”¹¹⁶

B. Condoning Same-Sex Marriages and Confusing Husbands

As noted earlier, Chapter 567 helps preserve the family unit among domestic partners.¹¹⁷ Some people, however, see this fact as “creating same-sex ‘marriages’ in name,” if not in practice.¹¹⁸ According to the Campaign for Children and Families, Chapter 567 “violates the spirit of Proposition 22,¹¹⁹ in which California voters demanded that marriage stay between a man and a woman.”¹²⁰ Likewise, Concerned Women for America believed that “[Chapter 567] is another attempt to mimic marriage through a relationship that is not [a] traditional marriage.

112. See Rosensaft, *supra* note 15, at 205-09. With regard to the common law alternative, Rosensaft concludes that “[it] is not a serious answer to the inequity presented by male name change upon marriage.” *Id.* at 207. As for the statutory alternative, Rosensaft concludes that “[it] involve[s] time, money, perhaps embarrassment, and do[es] not always provide the relief sought.” *Id.* at 209.

113. *Id.* at 206 (“It is little comfort or help to grooms who might want to change their last name that they can call themselves whatever they want [pursuant to a common law change of name], if they will not be able to obtain credit cards, bank accounts, mortgages, or many other necessities of today’s life.”).

114. *Id.* at 208-09 (noting that a petitioner might be “required to make public very private information, such as if he or she has ever been convicted of a crime or gone into bankruptcy”).

115. *Id.*

116. *Id.* at 205-09.

117. See Jacobs Letter, *supra* note 96 (noting that name changes create a more unified environment for domestic partners and their family members).

118. Frank D. Russo, *Why Did 26 of 32 California Assembly Republicans Vote Against the Name Equality Act?*, CAL. PROGRESS REP., May 9, 2007, http://californiaprogressreport.com/2007/05/why_did_26_of_3.html (on file with the *McGeorge Law Review*) (noting that Randy Thomasson, President of the Campaign for Children and Families, stated that “[t]his is creating same-sex ‘marriages’ in name by calling two homosexual men ‘Mr. and Mr. Smith’ to give them the honor and appearance of marriage”).

119. Proposition 22, which was overwhelmingly approved by California voters on March 7, 2000, was “a proposal to enact a state ‘Defense of Marriage Act’ as an initiative statute.” MarriageWatch.org, California Proposition 22, 2001, <http://www.marriagewatch.org/media/prop22.htm> (on file with the *McGeorge Law Review*). The final votes were 4,618,673 in favor and 2,909,370 against, with only six counties out of fifty-eight not approving the Proposition. *Id.* The Proposition declared that “[o]nly marriage between a man and a woman is valid or recognized in California.” *Id.*

120. Russo, *supra* note 118 (quoting Randy Thomasson, President of the Campaign for Children and Families).

Allowing unmarried persons to routinely change their names as though married is an affront to this foundational and honored institution.”¹²¹

However, there is little basis to such allegations. Chapter 567 “does not give any new rights to domestic partners”;¹²² it simply “provide[s] for equality”¹²³ and ensures that “both partners in a committed relationship have equal rights.”¹²⁴ Since the right to change one’s name is already available to domestic partners, Chapter 567 should not be seen as providing domestic partners with something uniquely reserved to married couples, but as making the process equally simple for both.¹²⁵

In addition, opponents of Chapter 567 also argued that it is “wrong” for the government “to make it easier for men to take their wives’ last names” because it will lead to the deterioration of a traditional male role.¹²⁶ That argument, however, ignores the fact that there are many commendable reasons why a man would change his last name to that of his wife. Some men, like Mike Buday, do it to carry on their wife’s family name, especially when the wife does not have any brothers.¹²⁷ Others do it to show their love.¹²⁸ Still others do it because they do not have ties to their own last name or because they prefer their wife’s name.¹²⁹ Finally, there are also couples who, either because of ethnic custom or desire, need to change both their last and middle names upon marriage.¹³⁰ The only reasonable conclusion to be drawn from this is that, in the end, Chapter 567 only

121. Letter from Penny P. Harrington, Dir. of Legislation, Concerned Women for Am. of Cal., to Assembly Member Fiona Ma, Cal. State Assembly (Apr. 25, 2007) (on file with the *McGeorge Law Review*) (“A domestic partnership is not a marriage. Marriage is a union between a man and a woman and is granted certain privileges and traditions because of the unique role it plays in our society. One of these traditions is the wife taking the husband’s name as evidence of their oneness and the formation of a family.”).

122. Telephone Interview with Catalina Hayes-Bautista, Staff Member, Office of Assembly Member Fiona Ma, in Sacramento, Cal. (May 30, 2007) (notes on file with the *McGeorge Law Review*).

123. *Id.*

124. Press Release, Equality Cal., Bill Gives Domestic Partners, Married Spouses Equal Opportunity to Take Surname of Choice, (Feb. 13, 2007), <http://www.eqca.org/site/apps/nl/content2.asp?c=9oINKWMCF&b=1716333&ct=3542861> [hereinafter February Press Release] (on file with the *McGeorge Law Review*).

125. See *id.* (“[Chapter 567] ensures that the rules regarding changing surnames apply to all Californians equally, regardless of gender or sexual orientation.” (quoting Geoff Kors, Executive Director of Equality California)).

126. Russo, *supra* note 118 (“‘Government needs to encourage men to be stronger fathers who provide for and protect their families, . . . not to be sissy men who abdicate their masculine leadership role because they’re confused.’” (quoting Randy Thomasson, President of the Campaign for Children and Families)).

127. Kasindorf, *supra* note 10; see also Jessica McBride, *More Grooms are Saying ‘I Do’ to Taking Bride’s Last Name in the Name of Love*, MILWAUKEE J. SENTINEL, Nov. 28, 1999, at 1 (noting that David Falk of Milwaukee took his wife’s name because she had no brothers).

128. See, e.g., John Ferri, *New Rules in the Name Game; Some Husbands are Taking Their Wives’ Last Names When They Marry*, TAMPA TRIB., July 17, 1995, at 1 (noting that Steve Mackey took his wife’s last name because of his love for her).

129. See, e.g., Lou Gonzales, *Man Finds Resistance to Name Change*, FLA. TIMES-UNION, Feb. 10, 2000, at D-2 (stating that Dan Cipoletti changed his name because he did not meet his biological father until he was nineteen and because he did not think his stepfather’s name was the right one either).

130. Catalina Hayes-Bautista, Background Report on AB 102, at 3 (2007) (on file with the *McGeorge Law Review*).

helps the families that need the help and does not infringe upon the rights of those that do not.¹³¹

C. Right to Privacy

Drawing upon Justice Brandeis' definition of privacy as "the right to be let alone,"¹³² it can also be argued that the right to choose one's name upon marriage or registration of a domestic partnership is an integral part of the right to privacy.¹³³ Pursuant to this argument, supporters of Chapter 567 maintain that the "people, not the government, should decide basic issues like whose name to take."¹³⁴

This argument finds some support in the U.S. Supreme Court's decisions. Specifically, the Court has indicated that personal decisions relating to marriages and/or family relationships are entitled to constitutional protection.¹³⁵ According to the Court, these choices are "central to personal dignity and autonomy" and are part of the liberty protected under the Due Process Clause.¹³⁶ Similarly, according to the proponents of Chapter 567, since one's name is central to one's family or partnership relationships, the decision of whether to change it upon

131. See CAL. FAM. CODE §§ 298.6(a), 306.5(a) (enacted by Chapter 567) (noting that parties to a marriage or a registered domestic partnership "shall not be required to have the same name[s] [or] to change [their] name[s]" upon marriage or registration of a domestic partnership).

132. *Olmstead v. United States*, 277 U.S. 438, 478 (1928) (Brandeis, J., dissenting), *overruled on other grounds by Katz v. United States*, 389 U.S. 347, 352-53 (1967).

133. Cf. *Kawashima*, *supra* note 22, at 94 ("The choice of a name by which one is to be known for the rest of one's life may certainly be characterized as a 'basic decision of one's life,' particularly when that choice involves adoption or rejection of a role and set of values sanctioned by centuries of practices." (quoting M.E. Spencer, *A Woman's Right to Her Name*, 21 UCLA L. REV. 665, 682 (1973))).

134. Letter from James Vaughn, Dir., Log Cabin Republicans, to Assembly Member Fiona Ma, Cal. State Assembly (Mar. 19, 2007) [hereinafter Vaughn Letter] (on file with the *McGeorge Law Review*); see also February Press Release, *supra* note 124 ("Deciding what's in a name is the province of committed couples, not the state." (quoting Mark Rosenbaum, Dir., ACLU)); Russell Shaw, *Another Inconvenient Truth: Joint-Hyphenated Married Names are a Hassle in Most States*, HUFFINGTON POST, June 11, 2007, http://www.huffingtonpost.com/russell-shaw/another-inconvenient-trut_b_51523.html (on file with the *McGeorge Law Review*) (arguing that no statute or "excessive red tape" should stand in the way of individuals who want to change their names).

135. *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 851 (1992) ("Our law affords constitutional protection to personal decisions relating to *marriage*, procreation, contraception, *family relationships*, child rearing, and education." (emphases added)). This view was reaffirmed recently in *Lawrence v. Texas*. 539 U.S. 558, 573-74 (2003).

136. *Casey*, 505 U.S. at 851. The Court stated:

These matters, involving the most intimate and personal choices a person may make in a lifetime, choices central to personal dignity and autonomy, are central to the liberty protected by the Fourteenth Amendment. At the heart of liberty is the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life. Beliefs about these matters could not define the attributes of personhood were they formed under compulsion of the State.

Id.

marriage or registration of domestic partnership should be left to the individuals affected.¹³⁷

V. CONCLUSION

Overall, Chapter 567 is not a radical departure from prior law. Before Chapter 567, although only women could change their names on a marriage license form, other groups could accomplish the same result through either a common law or a statutory name change.¹³⁸ Chapter 567 does not abrogate any of these alternatives.¹³⁹ Instead, Chapter 567 makes California's law more consistent with modern beliefs and liberties,¹⁴⁰ as well as with the laws of seven other states.¹⁴¹

As such, the importance of Chapter 567 lies in providing individuals with a choice.¹⁴² On the one hand, if a person decides not to change his or her name, it will now be the result of deliberation rather than inconvenience or inevitability. On the other hand, if an individual wants to change his or her name upon marriage or registration of a domestic partnership, Chapter 567 ensures that such a name change is available.¹⁴³ Indeed, if he so chooses, a Romeo of today would have no trouble winning the love of Juliet by doffing the Montague name and becoming a Capulet.¹⁴⁴

137. February Press Release, *supra* note 124 (stating that couples should decide which names to take; not the government); Vaughn Letter, *supra* note 134 (same).

138. See *supra* Parts II.A, II.C (explaining one's ability to change his or her name by common law or statute).

139. CAL. FAM. CODE §§ 298.6(b)(4)-298.6(c), 306.5(b)(4)-306.5(c) (enacted by Chapter 567) (noting that the Name Equality Act of 2007 does not abrogate an individual's common law right to change his or her name or to petition the court for a change of name).

140. See *supra* Parts IV.A, IV.C (describing modern arguments in opposition to traditional notions and suggesting that the right to a name change might implicate one's rights).

141. See Rosensaft, *supra* note 15, at 191 & n.29 (noting that only seven other states provided that either party to a marriage, or both, could legally change their surname). The provisions among these states vary significantly. See GA. CODE ANN. § 19-3-33.1 (1999); HAW. REV. STAT. § 574-1 (2006); IOWA CODE ANN. § 595.5 (West Supp. 2007); LA. CIV. CODE ANN. art. 100 (2007); MASS. GEN. LAWS ANN. ch. 46, § 1D (West 1994); N.Y. DOM. REL. LAW § 15 (McKinney 2007); N.D. CENT. CODE § 14-03-20.1 (2004). Notably, however, California is now the only state that extends the right of a name change to domestic partners *at the time* parties register their domestic partnership. FACT SHEET, *supra* note 9, at 1.

142. See CAL. FAM. CODE §§ 298.6(b), 306.5(b) (enacted by Chapter 567) (outlining the range of possible names available to individuals upon marriage or registration of a domestic partnership).

143. CAL. FAM. CODE §§ 298.6(b), 306.5(b).

144. See *id.* § 306.5(b) (allowing a spouse to take the last name of the other spouse).